REMARKS/ARGUMENTS

Claims 1-50 are pending in this application. Claims 1, 12, 23, 34 and 45-50 have been amended.

No new matter is being presented, and approval of the amended claims is respectfully requested.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Patent No. 6,219,374 and U.S. Pat. Publ. No. 2002/0131522.

Claims 1-6, 8, 12-14, 16, 17, 19, 23-28, 30, 34-36, 38, 39, 41, 45, 46 and 47-50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,219,374 to Kim *et al.* ("Kim") in view of U.S. Patent Publication No. 2002/0131522 to Felgentreff ("Felgentreff").

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be "a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicants' disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 1-6, 8, 12-14, 16, 17, 19, 23-28, 30, 34-36, 38, 39, 41, 45, 46 and 47-50 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art references must teach or suggest all the claims limitations.

Regarding amended independent claim 1 with claims 2-6 and 8 depending therefrom, amended independent claim 12 with claims 13, 14, 16, 17 and 19 depending therefrom, amended independent claim 23 with claims 24-28 and 30 depending therefrom, amended independent claim 34 with claims 35, 36, 39 and 41 depending therefrom, and amended independent claims

45-50, Applicant has amended independent claims 1, 12, 23, 34 and 45-50 to include claim limitations not taught or suggested in the cited references.

Applicant's independent claims 1, 12, 23, 34 and 45-50, as presently amended, recite in part "***different portions of an initial data stream***, each portion comprising an I/Q pair of modulated symbols and ***each portion being of a different quantity of modulated symbols***". Applicant respectfully asserts that neither Kim nor Felgentreff, either individually or in any proper combination, teach or suggest Applicant's invention as presently claimed in amended independent claims 1, 12, 23, 34 and 45-50.

Therefore, since neither Kim nor Felgentreff teach or suggest Applicant's claimed invention including "***different portions of an initial data stream***, each portion comprising an I/Q pair of modulated symbols and ***each portion being of a different quantity of modulated symbols***", these references, either individually or in any proper combination, **cannot** render obvious, under 35 U.S.C. §103, Applicant's invention as presently claimed in amended independent claims 1, 12, 23, 34 and 45-50. Accordingly, Applicant respectfully requests the rejection of presently amended independent claims 1, 12, 23, 34 and 45-50 be withdrawn.

The nonobviousness of independent claims 1, 12, 23 and 34 preclude a rejection of claims 2-6, 8, 13, 14, 16, 17, 19, 24-28, 30, 35, 36, 39 and 41 which variously depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 12, 23 and 34 and claims 2-6, 8, 13, 14, 16, 17, 19, 24-28, 30, 35, 36, 39 and 41 which variously depend therefrom.

Obviousness Rejection Based on U.S. Pat. Publ. No. 2002/0172264 and U.S. Pat. Publ. No. 2002/0131522.

Claims 1-10, 23-32, 47 and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0172264 to Wiberg *et al.* ("Wiberg") in view of U.S. Patent Publication No. 2002/0131522 to Felgentreff ("Felgentreff").

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be "a reason that would have

prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicants' disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 1-10, 23-32, 47 and 49 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art references must teach or suggest all the claims limitations.

Regarding amended independent claim 1 with claims 2-10 depending therefrom, amended independent claim 23 with claims 24-32 depending therefrom, and amended independent claims 47 and 49, Applicant has amended independent claims 1, 23, 47 and 49 to include claim limitations not taught or suggested in the cited references.

Applicant's independent claims 1, 23, 47 and 49, as presently amended, recite in part "***different portions of an initial data stream***, each portion comprising an I/Q pair of modulated symbols and ***each portion being of a different quantity of modulated symbols***". Applicant respectfully asserts that neither Wiberg nor Felgentreff, either individually or in any proper combination, teach or suggest Applicant's invention as presently claimed in amended independent claims 1, 23, 47 and 49.

Therefore, since neither Wiberg nor Felgentreff teach or suggest Applicant's claimed invention including "***different portions of an initial data stream***, each portion comprising an I/Q pair of modulated symbols and ***each portion being of a different quantity of modulated symbols***", these references, either individually or in any proper combination, **cannot** render obvious, under 35 U.S.C. §103, Applicant's invention as presently claimed in amended independent claims 1, 23, 47 and 49. Accordingly, Applicant respectfully requests the rejection of presently amended independent claims 1, 23, 47 and 49 be withdrawn.

The nonobviousness of independent claims 1 and 23 preclude a rejection of claims 2-10 and 24-32 which variously depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1 and 23 and claims 2-10 and 24-32 which variously depend therefrom.

Unknown Rejection Based on U.S. Pat. Publ. No. 2003/0035466.

Claims 1-6, 8-10, 23-28 and 30-32 stand rejected under either 35 U.S.C. § 102(a) or 35 U.S.C. § 103(a) as being either anticipated or unpatentable over U.S. Patent Publication No. 2003/0035466 to Proctor Jr. *et al.* ("Proctor"). **NOTE**: the rejection in the Office Action appears under the heading "Claim Rejections-35 USC § 103" (Office Action, p. 6), however, the specific rejection in the Office Action lists an anticipation rejection under 35 USC § 102 (Office Action, p. 8). Applicant provides an analysis under 35 U.S.C. § 103.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be "a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicants' disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 1-6, 8-10, 23-28 and 30-32 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations.

Regarding amended independent claim 1 with claims 2-6 and 8-10 depending therefrom, and amended independent claim 23 with claims 24-28 and 30 depending therefrom, Applicant has amended independent claims 1 and 23 to include claim limitations not taught or suggested in the cited reference.

Applicant's independent claims 1 and 23, as presently amended, recite in part "***different portions of an initial data stream***, each portion comprising an I/Q pair of modulated symbols and ***each portion being of a different quantity of modulated symbols***". Applicant respectfully asserts that Proctor does not teach or suggest Applicant's invention as presently claimed in amended independent claims 1 and 23.

Therefore, since Proctor does not teach or suggest Applicant's claimed invention including "***different portions of an initial data stream***, each portion comprising an I/Q pair of modulated symbols and ***each portion being of a different quantity of modulated symbols***", this reference **cannot** render obvious, under 35 U.S.C. §103, Applicant's invention as presently claimed in amended independent claims 1 and 23. Accordingly, Applicant respectfully requests the rejection of presently amended independent claims 1 and 23 be withdrawn.

The nonobviousness of independent claims 1 and 23 preclude a rejection of claims 2-6, 8-10, 24-28 and 30-32 which variously depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1 and 23 and claims 2-6, 8-10, 24-28 and 30-32 which variously depend therefrom.

Obviousness Rejection Based on U.S. Patent No. 6,219,374 and U.S. Patent No. 6,574,205.

Claims 9, 10, 15, 20, 21, 30, 31, 42 and 43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,219,374 to Kim *et al.* ("Kim") in view of U.S. Patent No. 6,574,205 to Sato ("Sato").

The nonobviousness of independent claims 1, 12, 23 and 34 preclude a rejection of claims 9, 10, 15, 20, 21, 30, 31, 42 and 43 which variously depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 12, 23 and 34 and claims 9, 10, 15, 20, 21, 30, 31, 42 and 43 which variously depend therefrom.

Obviousness Rejection Based on U.S. Patent No. 6,219,374 and U.S. Pat. Publ. No. 2002/0172264.

Claims 11 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,219,374 to Kim *et al.* ("Kim") in view of U.S. Patent Publication No. 2002/0172264 to Wiberg *et al.* ("Wiberg").

The nonobviousness of independent claims 1 and 23 preclude a rejection of claims 11 and 33 which respectively depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1 and 23 and claims 11 and 33 which respectively depend therefrom.

Obviousness Rejection Based on U.S. Patent No. 6,219,374 and U.S. Patent No. 6,222,875.

Claims 7, 18, 29 and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,219,374 to Kim *et al.* ("Kim") in view of U.S. Patent No. 6,222,875 to Dahlman *et al.* ("Dahlman").

The nonobviousness of independent claims 1, 12, 23 and 34 preclude a rejection of claims 7, 18, 29 and 40 which respectively depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 12, 23 and 34 and claims 7, 18, 29 and 40 which respectively depend therefrom.

Obviousness Rejection Based on U.S. Patent No. 6,219,374 and U.S. Pat. Publ. No. 2003/0156593.

Claims 22 and 44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,219,374 to Kim *et al.* ("Kim") in view of U.S. Patent Publication No. 2003/0156593 to McDonough *et al.* ("McDonough").

The nonobviousness of independent claims 12 and 34 preclude a rejection of claims 22 and 44 which respectively depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600

(Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 12 and 34 and claims 22 and 44 which respectively depend therefrom.

CONCLUSION

In light of the amendments contained herein, Applicant submits that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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